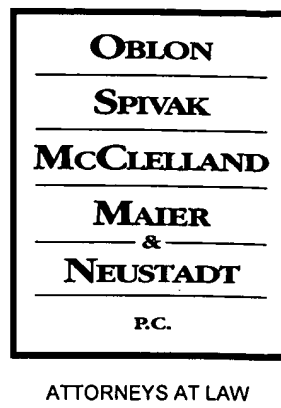




Docket No.: 229893US26



COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

RE: Application Serial No.: 10/663,756  
Applicants: Jean-Pierre YQUEL, et al.  
Filing Date: September 17, 2003  
For: VARIABLE-FLOW TILT VALVE AND CONTAINER  
FITTED WITH SUCH A VALVE  
Group Art Unit: 3754  
Examiner: Derakshani, Philippe

SIR:

Attached hereto for filing are the following papers:

**Provisional Election of Species**

Our check in the amount of **\$0.00** is attached covering any required fees. In the event any variance exists between the amount enclosed and the Patent Office charges for filing the above-noted documents, including any fees required under 37 C.F.R 1.136 for any necessary Extension of Time to make the filing of the attached documents timely, please charge or credit the difference to our Deposit Account No. 15-0030. Further, if these papers are not considered timely filed, then a petition is hereby made under 37 C.F.R. 1.136 for the necessary extension of time. A duplicate copy of this sheet is enclosed.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.

Steven P. Weihrouch

Registration No. 32,829

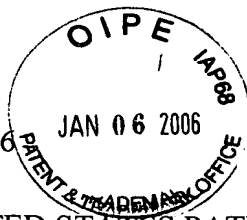
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Philippe J.C. Signore, Ph.D.  
Registration No. 43,922

DOCKET NO: 229893US26



IN THE UNITED STATES PATENT & TRADEMARK OFFICE

IN RE APPLICATION OF :  
JEAN-PIERRE YQUEL, ET AL. : EXAMINER: DERAKSHANI, PHILIPPE  
SERIAL NO: 10/663,756 :  
FILED: SEPTEMBER 17, 2003 : GROUP ART UNIT: 3754  
FOR: VARIABLE-FLOW TILT VALVE :  
AND CONTAINER FITTED WITH SUCH  
A VALVE

**PROVISIONAL ELECTION OF SPECIES**

COMMISSIONER FOR PATENTS  
ALEXANDRIA, VIRGINIA 22313

SIR:

In response to the Election of Species Requirement dated December 6, 2005, Applicants provisionally elect with traverse Species I, drawn to Figures 1-3C, and lists Claims 1-4, 6, 8-22, 24-27, 29, and 43-50 as readable thereon; Claims 1-4, 8-22, 25-27, and 43-50 as generic to species I-III; and Claims 6 and 29 as generic to species I-II. Applicants are entitled to consideration of claims, directed to non-elected species, which include the limitations of an allowable generic claim, as provided by 37 C.F.R. 1.141(a).

Applicants respectfully traverse the election requirement for the following reasons.

Applicants traverse the outstanding requirement as the outstanding requirement has not established that an undue burden would be required if the requirement was not issued and if all the claims were examined together. More particularly, MPEP §803 states:

If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

In the present application no undue burden has been established if each of the claims were examined together. The three species are related and it is not clear how searching and examining the different inlet configurations shown in the figures would significantly increase the Office's burden. In contrast, the present requirement may subject the Applicants to the added financial burden of prosecuting claims to the related inlet configurations in separate proceedings.

Further, the Election of Species Requirement includes the conclusory statement that "[t]his application contains claims directed to ... patentably distinct species ..." and lists three species. However, the Election of Species Requirement fails to state any basis in support of the finding that the three species are **patentably distinct**. This is contrary to MPEP §816, which states:

The particular reasons relied on by the examiner for holding the inventions as claimed are either independent or distinct should be concisely stated. A mere statement of conclusion is inadequate. The reasons upon which the conclusion is based should be given...

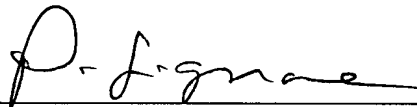
In the absence of any annunciated basis, it is respectfully submitted that the Election of Species Requirement fails to establish distinctness and the Applicant cannot fully address the Office's conclusion and cannot fully consider whether or not the three species to the different inlet configurations are indeed patentably distinct.

Application No. 10/663,756  
Reply to Office Action of December 6, 2005

Therefore, Applicants respectfully request that the requirement to elect a single disclosed species be reconsidered and withdrawn,<sup>1</sup> and that a full examination on the merits of Claims 1-50 be conducted.

Respectfully submitted,

OBLON, SPIVAK, McCLELLAND,  
MAIER & NEUSTADT, P.C.



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<sup>1</sup>See MPEP 821.01.